

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6274 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MODI ARC ELECTORDES CO

Versus

G.D.BHAGAT

Appearance:

M/S TRIVEDI & GUPTA for Petitioners

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 10/12/96

ORAL JUDGEMENT

1. Petitioners, who are employers, have by this petition challenged the legality and validity of the award passed by the labour court, Navsari dated 31.3.95 whereby the labour court has directed the employer to pay to the workman backwages for the period between 17th July, 1982 to 31st July, 1988 coupled with consequential benefits arising therefrom after deducting the wages

between 21st July, 1982 to 31st July, 1983. It is said award of the labour court, dated 31st March, 1995 which is under challenge before this court.

2. From the evidence produced before the labour court, it is the established position that the workman was on leave from 17th June, 1982 to 17th July, 1982 and it appears that during that period he joined the services of Heera Electrodes and remained to serve the said institution upto 31st March, 1983. The fact that he was on leave during this specified period only is accepted by the labour court and for the rest of the period he was not on leave and that he joined the services of Heera Electrodes is also established by the evidence led by the employer, though technically speaking, it is submitted before this court that the said evidence is not proved and not accepted and therefore can not be relied upon by this court. If one turns to the document produced by the employer at Exh.54, dated 16th June, 1982 it becomes clear that the workman has proceeded on leave from 17th June, 1982 to 17th July, 1982 and that said leave was granted. By letter, dated 21st June, 1982 he sought appointment with Heera Electrodes and was in fact appointed as Sales Officer (Technical services) on the terms and conditions stated in the document. There is certificate issued by Heera Electrodes that the workman has served the institution between 1st July, 1982 to 31st March, 1983. and from the aforesaid document, which is unfortunately not proved by the employer, it is sought to be contended before this court that in fact the workman left the services of the employer or abandoned the contract of service of the employer and accepted the services of another institution and that therefore he was not entitled to any compensation. The labour court has very rightly brushed aside this important piece of document solely on the ground that the employer has failed to prove it by examining the witness and by proving the document and that in the absence thereof no reliance can be placed upon such document. The document was, in fact, produced before the labour court and the officer of the employer was also examined before the labour court. No attempt was made by the workman to controvert the situation by putting any question to the officer of the company and by confronting him with documentary evidence which is produced by the employer. The question is as to whether adverse inference can be drawn in such situation, and if yes, it could be drawn against whom. Much can be said about the weakness of evidence of the employer, but at the same time it shall have to be kept in mind that here is a workman who has opted to work with another institution by accepting

services of that institution and has in fact served such institution. Keeping the aforesaid facts in mind, in fact, this court shall have to consider as to whether the workman could have been provided total compensation from the date of his discharge or retrenchment from the date of his superannuation, which period works out around period of more than 5 years and four months. As against that the contention of the employer also can not be lightly brushed aside and such contention also shall have to be kept in mind. Keeping the aforesaid situation in mind, this court shall have to decide as to whether it shall interfere with the compensation award passed by the labour court when the employer company can not be said to be totally at fault or can not be said to be totally unjustified in stating that workman was one who has already abandoned the services of the employer. On the other hand, the workman can take up the technical plea that in fact the evidence is not produced and proved by the employer and that therefore adverse inference should be drawn against the employer for not producing and proving the documents on which reliance is placed by the employer.

3. From the evidence of the workman at Exh.73 read with the evidence of the Legal Officer of Heera Electrodes one thing is established that the workman has served as Sales Officer between 1st July, 1982 to 31st March, 1983 with Heera Electrodes, and that part of evidence is not in fact seriously controverted. Keeping the aforesaid situation in mind the present case becomes one where the scales of justice are required to be evenly balanced. It is to be decided as to whether workman of this nature who has desired to serve another institution and has served another institution can claim total compensation for the period during which he has served another institution as well as on the ground that his services were illegally retrenched in violation of section 25F of I.D.Act, 1947. In my opinion, the labour court having reached right conclusion and having found that the employer having failed to produce any evidence to substantiate his case that the workman actually abandoned the service and joined the services of another institution, the employer can not succeed fully because the employer has failed to prove documents on which it has placed reliance. At the same time, it shall have to be kept in mind that the workman has already succeeded before the labour court and the labour court has awarded him the backwages with all consequential benefits for the period during which he has been out of service and he has not been paid wages. In my opinion, the interest of justice will be met by properly modulating the relief

granted by the labour court in the light of binding precedents of the Supreme Court as well as of this court. Period during which the workman has served with another institution would obviously be excluded from the period of his service and over and above it shall have to be kept in mind that he wanted to serve elsewhere. Keeping in mind total abandonment of service is not established by the employer by leading proper evidence and by proving documents which ought to have been proved, the award of compensation to the workman could be substantially reduced to a shorter period and that would meet the ends of justice as that would equally recompensate the employer and would give some relief to the workman who has

already superannuated in the year 1988. The ends of justice will be met if the period of compensation is reduced to a shorter period. The employer is, therefore, held liable to pay compensation to workman for the period commencing from 1.4.85 to 31st July, 1988.

4. In the result, to the aforesaid extent this Special C.A.succeeds partially and the judgment and award of the labour court is substituted by the award passed by this court and the employer is directed to pay the compensation as determined hereinabove within a period of four months from the date of receipt of writ of this court failing which it would be open to the workman to take appropriate action in the court of law for recovery. Rule is accordingly partially made absolute. No costs.

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